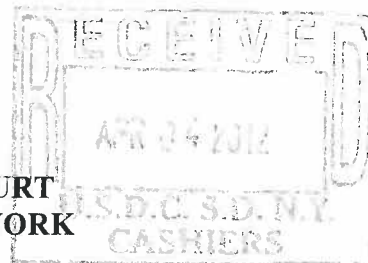


JUDGE JONES

Neil M. Zipkin
Chester Rothstein
AMSTER, ROTHSTEIN & EBENSTEIN LLP
90 Park Avenue
New York, NY 10016
(212) 336-8000 (main)
(212) 336-8001 (facsimile)
Attorneys for Plaintiff

12 CV 2624

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
MICHAEL MILLER FABRICS, LLC,

Plaintiff,

vs.

BEATRICE HOME FASHIONS, INC., and
LTD COMMODITIES LLC

Defendants.
----- X

Civil Action No.

COMPLAINT FOR
COPYRIGHT INFRINGEMENT
AND DEMAND FOR JURY TRIAL

Plaintiff Michael Miller Fabrics, LLC (“MMF” or “Plaintiff”), for its Complaint against Beatrice Home Fashions, Inc. (“Beatrice”), and LTD Commodities LLC (“LTD”) (collectively and individually, “Defendants”), alleges as follows:

THE PARTIES

1. MMF is a limited liability company duly organized and existing under the laws of the State of New York, with its principal place of business at 118 West 22nd Street, 5th Floor, New York, NY 10011.

2. Upon information and belief, Beatrice is a corporation organized and existing under the laws the State of New Jersey, with a principal place of business at 151 Helen Street, South Plainfield, NJ, 07080.

3. Upon information and belief, LTD is a limited liability company organized and existing under the laws the State of Delaware, with a principal place of business at 2800 Lakeside Drive, Bannockburn, IL 60015.

JURISDICTION AND VENUE

4. Upon information and belief, Beatrice is transacting business within this judicial district and is subject to the jurisdiction of this Court pursuant to the laws of this State and Rule 4 of the Federal Rules of Civil Procedure. By means of illustration, upon information and belief, products manufactured by Beatrice, including the Infringing Bed Set, as hereinafter defined, have been distributed within this judicial district and elsewhere throughout this State.

5. Upon information and belief, LTD is transacting business within this judicial district and is subject to the jurisdiction of this Court pursuant to the laws of this State and Rule 4 of the Federal Rules of Civil Procedure. By means of illustration, upon information and belief, products distributed by LTD, including the Infringing Bed Set, as hereinafter defined, have been distributed within this judicial district and elsewhere throughout this State.

6. Based on the foregoing, personal jurisdiction may be exercised over Beatrice and LTD pursuant to C.P.L.R. § 302(a)(1) since Defendants have in person or through an agent contracted anywhere to supply goods or services in New York State and the cause of action arises from such acts.

7. Moreover, personal jurisdiction may be exercised over Beatrice and LTD since Beatrice and LTD have committed a tortious act within New York State within the meaning of C.P.L.R. § 302(a)(2) because the Infringing Bed Sets have been distributed in this State.

8. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338.

9. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(a).

FACTS

10. MMF is engaged in the business of designing, manufacturing, selling, and distributing original and distinctive fabric designs, and has, over the past decades, earned a well-deserved and enviable reputation in the trade for providing unique and original fabric designs of high quality. MMF sells its fabric designs within this judicial district, throughout the United States of America, and throughout the world.

11. MMF designs and/or purchases, *inter alia*, a wide variety of high quality original and distinctive fabric designs, which are typically either manufactured by or on behalf of MMF and sold to manufacturers who use such fabric to create goods sold to end user consumers; licensed to third parties who use such designs to manufacture their own fabric or items for ultimate use as goods sold to end user consumers; or sold to retailers who resell such fabric to end user consumers.

12. Among the many fabric designs owned by MMF is a fabric design entitled “Dandy Damask” (the “Dandy Damask Design”). Exhibit A is a photocopy showing a representation of MMF’s Dandy Damask Design.

13. The Dandy Damask Design is an original copyrightable fabric design created in 2006. All rights in the Dandy Damask Design, including all copyright rights and all income, royalties, damages, and payments due in respect of the same, were assigned to MMF.

14. Said fabric design contains material which is wholly original and is copyrightable subject matter under the laws of the United States of America.

15. On or about May 1, 2006, Dandy Damask Design was first published in the United States.

16. MMF and its predecessors in interest have duly complied with all of the provisions of Title 17 of the United States Code, and all of the applicable laws governing copyright to register its claims to copyright in the Dandy Damask Design, and has duly received a Certificate of Copyright Registration pertaining to said pattern from the Register of Copyrights.

17. MMF's Dandy Damask Design is the subject of United States Copyright Registration No. VA-1-404-189 (the "Copyright Registration"). A copy of the Copyright Registration is attached as Exhibit B.

18. MMF is, and for all times relevant hereto has been, the sole proprietor of all right, title, and interest in and to the copyright in the Dandy Damask Design and the Copyright Registration.

19. MMF has manufactured and offered for sale or sold fabric which includes the Dandy Damask Design since at least as early as 2006. Since that time, MMF has sold substantial quantities of fabric which includes its Dandy Damask Design.

20. Subsequent to the publication of the Dandy Damask Design and subsequent to the effective date of the Copyright Registration, Beatrice and LTD infringed MMF's copyright in the Dandy Damask Design and the Copyright Registration by copying, importing, reproducing,

distributing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting, or advertising said design or by causing and/or participating in such copying, importing, reproducing, distributing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising thereof, all in violation of MMF's rights under Section 106 of the Copyright Law, title 17 of the United States Code.

21. In or about January of 2012, MMF learned of bed sets under the name "English Damask Comforter Set" sold at least in Queen and King sizes being distributed by LTD which included a substantially similar copy of MMF's Dandy Damask Design (the "Infringing Bed Set"). A photograph of one representative Infringing Bed Set showing the infringing design is attached hereto as Exhibit C, and a representative page from one of LTD's retail web sites is attached as Exhibit D.

22. Upon information and belief, the Infringing Bed Set distributed in the United States by LTD were manufactured outside of the United States and imported into the United States by or on behalf of Defendants.

23. On or about February 27, 2012, MMF put Beatrice on notice of the infringement of MMF's rights in its Dandy Damask Design. A copy of the notice letter dated February 27, 2012 to Mr. Sam Gindi, President, Beatrice Home Fashions, Inc., 151 Helen Street, South Plainfield, NJ 07080 (without Exhibits) is attached hereto as Exhibit E.

24. On or about March 7, 2012, Beatrice, through its counsel Shari J. Fagen of the law firm Robinson, Brog, Leinwand, Greene, Genovese & Gluck P.C., 875 Third Avenue, New York, NY 10022, contacted counsel for MMF by telephone seeking additional time to respond.

Although several correspondence was subsequently exchanged, an agreed resolution of MMF's claims have not been reached.

25. The copying, importing, offering for sale, and sale by Defendants of the Infringing Bed Set was without the permission, license, or consent of MMF.

26. The future copying, importing, offering for sale, and sale by Defendants of Infringing Bed Sets is without the permission, license, or consent of MMF.

27. Defendant's acts alleged herein constitute violations of the exclusive rights of MMF under 17 U.S.C. §§106, 113 and 602 and constitute infringement under 17 U.S.C. §501.

28. Upon information and belief, the copying of the Dandy Damask Design by Defendants was with knowledge that the design was proprietary and therefore its infringement was knowing and willful. To the extent Defendant's knowledge was not knowing and willful, it was with willful blindness.

29. MMF has suffered and will continue to suffer damage to its business, including loss of its reputation for exclusivity for goods which include its Dandy Damask Design, as well as loss of sales.

30. Defendant's acts are damaging to MMF in an amount to be determined at trial and are in a manner for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff MMF demands:

A. Defendants and their officers, agents, servants, employees, and attorneys and all those in active concert and participation with them, be preliminarily and permanently enjoined from:

i. manufacturing, reproducing, copying, displaying, publishing, vending, distributing, selling, promoting, importing, exporting, and/or advertising,

assisting, inducing, or contributing to the manufacturing, reproducing, copying, displaying, publishing, vending, distributing, selling, promoting, and/or advertising any product that contains material copied from and substantially similar to the Dandy Damask Design; and


- ii. otherwise infringing the copyright in the Dandy Damask Design, including but not limited to the copyright represented by the Copyright Registration.
- B. During the pendency of this lawsuit Defendants be required to deliver to MMF for storage or destruction all goods which include copies of the Dandy Damask Design or which are substantially similar to the Dandy Damask Design, including but not limited to all Infringing Bed Sets.
- C. Defendants be required to pay to MMF such actual damages as MMF has sustained in consequence of the infringement by Defendants of the Dandy Damask Design and to account for all gains, profits and advantages, with full costs to be allowed to Plaintiff as provided in 17 U.S.C. §§504 and 505.
- D. If infringement of MMF's rights are shown to have been commenced subsequent to March 23, 2007, the effective date of the Copyright Registration, that attorneys' fees be awarded to Plaintiff as provided in 17 U.S.C. §505.
- E. If infringement of Plaintiff's rights is shown to have been commenced subsequent to March 23, 2007, the effective date of the Copyright Registration, that MMF be entitled to elect that statutory damages be awarded to Plaintiff as provided in 17 U.S.C. §504.
- F. Plaintiff be granted such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial.

Dated: New York, NY
April 4, 2012

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Plaintiff
90 Park Avenue
New York, NY 10016
(212) 336-8000 (main)
(212) 336-8001 (facsimile)

By 

Neil M. Zipkin
Chester Rothstein

EXHIBIT A

CX3095 Dandy Damask
Color: SPA

michael miller
FABRICS LLC.



EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-404-189



MAR 23 2007

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK

Black and white cubes and flowers

NATURE OF THIS WORK

Fabric Design

PREVIOUS OR ALTERNATIVE TITLES

as 2nd titled: Garden; 613221 Cubism; 613212 Square; 613213 Cowboy 'Kneeling'; 613215 Dandy Dismark

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume

Number

Issue Date

On Page

2

NAME OF AUTHOR

a Anstet Studio Inc

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?

☒ Yes
☐ No

Author's Nationality or Domestic Name of Country

OR ☒ Citizen of *USA*
☐ Domesticated in *NY*

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.

☐ 3-Dimensional sculpture
☒ 2-Dimensional artwork
☐ Reproduction of work of art
☐ Map
☐ Photograph
☒ Jewelry design
☐ Technical drawing
☐ Text
☐ Architectural work

NAME OF AUTHOR

b Design Works International

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?

☒ Yes
☐ No

Author's Nationality or Domestic Name of Country

OR ☒ Citizen of *USA*
☐ Domesticated in *NY*

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

NATURE OF AUTHORSHIP Check appropriate boxes. See instructions.

☐ 3-Dimensional sculpture
☒ 2-Dimensional artwork
☐ Reproduction of work of art
☐ Map
☐ Photograph
☐ Jewelry design
☐ Technical drawing
☐ Text
☐ Architectural work

3

Year in Which Creation of This Work Was Completed

a 2006

This information must be given Year in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information Month Day Year

OR If this work has been published

USA Month *05* Day *01* Year *2006*

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Michael Miller Fabrics LLC
118 West 22nd Street - 8th Floor
New York, NY 10011-2416
212 704 0774 Phone

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

By Written Assignment

APPLICATION RECEIVED

MAR 23 2007

ONE DEPOSIT RECEIVED

MAR 23 2007

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK

• Complete all applicable spaces (numbers 1-4) on the reverse side of this page.
• See detailed instructions.

DO NOT WRITE ABOVE

Page 1 of 2

EXAMINED BY 46

FORM VA

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☒ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ☐ Va. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.If your answer is "Yes," give: Previous Registration Number: ☐ VYear of Registration ☐ V**DERIVATIVE WORK OR COMPILATION** Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ☐ Vb. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ☐ V**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.Name ☐ VAccount Number ☐ V**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ☐ VArea code and daytime telephone number ☐ ()Email ☐ V

Michael Miller Fabrics LLC
 118 West 22nd Street - 8th Floor
 New York, NY 10011-2416
 212 704-0774 Phone
 212 633 0272 Fax
 mmf@michaelmillerfabrics.com

Fax number ☐ ()**CERTIFICATION** I, the undersigned, hereby certify that I am thecheck only one ☐ V☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of

Michael Miller Fabrics LLC

Name of author or other copyright claimant, or owner of exclusive right(s) ☐ V

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ☐ V If this application gives a date of publication in space 3, do not sign and submit it before that date.

Camila Steiner

Date 3/14/07Handwritten signature ☐ VName ☐ V

michael miller fabrics LLC

Number/Street/Apt. ☐ V

118 West 22nd Street - 8th Floor

City/State/ZIP ☐ V

New York, NY 10011-2416

Certificate
will be
mailed in
window
envelope
to this
address:

• Complete all necessary spaces
 • Sign your application in space 8

1. Application form
 2. Nonreturnable filing fee in check or money As of July 1, 2007,
 the filing fee for
 3. Deposit material

Library of Congress
 Copyright Office
 101 Independence Avenue, S.E.
 Washington, D.C. 20540-0000

EXHIBIT C

Damask

3 pc. Bed Set



☐ QUEEN

☒ KING

100% Polyester

Care Instructions:

Machine Wash Cold.
Gentle Cycle.
Do Not Bleach.
Line or Tumble Dry Low.
Cool Iron if Necessary.

Made In China
Beatrice Home Fashions Inc.
Plainfield, NJ 07080
RN#59827

EXHIBIT D



LTD Commodities
Providing around the world values since 1963

Hello, [Sign In](#) New Customer? [Start Here](#)
[My Account](#) [My Favorites](#) [Order Status](#) [Help](#)

Items: 0

[View Cart or Checkout](#)

damask

[Go](#)

Shop Catalogs | For the Home | Apparel + Beauty | Garden | Housewares + Dining | Toys + Sports | Bed + Bath | More Departments | Sale
Books + Media | Gifts | Pets | Purses + Travel Bags | Electronics | Storage | Stationery + Crafts | Home Improvement | Baby | Holiday

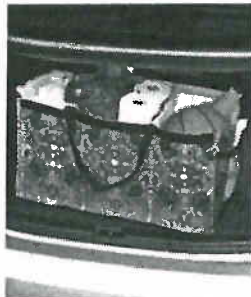
By Category

Bed + Bath (1)
For the Home (1)
Home Improvement (1)
Purses + Travel Bags (1)

By Price

Sort by: [Relevance](#)

Total Items Found: 4 Searching on Keyword(s): damask



compare at: \$16.99
Our Price \$9.95 each
[Trunkster Divided Bags](#)



starting as low as
\$29.95 per set
[English Damask Comforter Set](#)



Only \$9.95 each
was: ~~\$12.96~~
[Fashion Laptop Carry Cases](#)



was: ~~\$7.96~~
NOW Only \$5.50 each
[Damask Lunch Totes](#)

"LTD Commodities® began as a family owned and operated business in 1963 and has grown into one of the nation's premier catalog retailers. We are a trusted source of quality products at the lowest prices, where you save BIG every day." *The LTD Family*



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Bed + Bath
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Home Improvement
Garden

Books + Media
Housewares + Dining
Toys + Sports
Baby
Gifts

Electronics
Purses + Travel Bags
Stationery + Crafts
Storage
Pets

Quick Order Form
Free Catalog Request
Affiliate Program

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EXHIBIT E

**AMSTER
ROTHSTEIN
& EBENSTEIN LLP**
Intellectual Property Law

90 Park Avenue
New York NY 10016

Main 212 336 8000

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Robert M. Bilotta, Jr.

* Not admitted in New York

February 27, 2012

Chester Rothstein

Direct 212 336 8050

E-mail crothstein@arelaw.com

via *FEDERAL EXPRESS*

Mr. Sam Gindi, President
Beatrice Home Fashions, Inc.
151 Helen Street
South Plainfield, NJ 07080

Re: Michael Miller Fabrics, LLC/Beatrice Home Fashions Inc.
Infringement of CX-3095 - *Dandy Damask*
Our File: 58725-0032

Dear Mr. Gindi:

We are copyright counsel to Michael Miller Fabrics, LLC ("Michael Miller"). Michael Miller creates or obtains exclusive rights in fabric designs in original patterns which have been widely distributed in the United States and throughout the world, and has developed a reputation as being a source for distinctive designs of high quality. The exclusivity of Michael Miller's designs are protected under the United States Copyright Law, Title 17 of the United States Code.

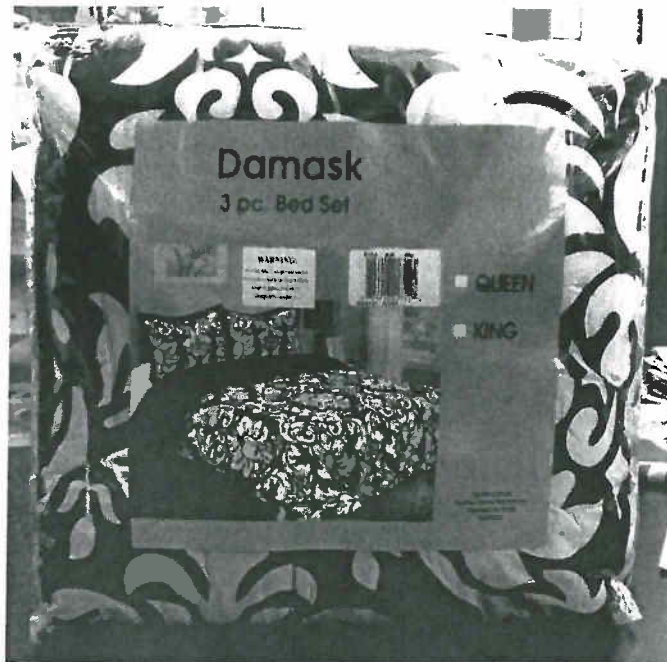
Specifically, our client is the owner by assignment of a copyrighted fabric design entitled "Dandy Damask" (the "Dandy Damask Design"). The Dandy Damask Design is the subject of United States Copyright Registration No. VA 1-404-189 ("the '189 Registration") dated March 23, 2007, a copy of which, along with a copy of the Dandy Damask Design, is attached to this letter as EXHIBIT A.

It has come to our client's attention that your company offers a product entitled "3 Piece Bed Set" which includes a fabric design which is a direct infringing copy of the Dandy Damask Design. For identification purposes, the following shows the Infringing Product:

Beatrice Home Fashions, Inc.

-2-

February 27, 2012



Your offering for sale and selling of the Infringing Product is in violation of our client's exclusive rights in its copyright under Section 106 of the Copyright Act (17 U.S.C. §106). You are subject to an injunction (17 U.S.C. §502), and impounding and destruction of infringing articles (17 U.S.C. §503). You are liable for our client's damages, and for any additional profits attributable to the infringement which you may have made (17 U.S.C. §504). In addition, since our client owns a federal copyright registration covering its Dandy Damask Design, namely the '189 Registration, it is also entitled to an award of its attorneys' fees and, if willful infringement is shown, statutory damages of up to \$150,000. 17 U.S.C. §504.

On behalf of our client, we demand that you immediately cease and desist from any and all offering for sale, sale, advertising, shipment, or display of the Infringing Product and we demand that you hold all copies of the Infringing Product in a single location for destruction under our client's supervision. We further demand that we hear from you, in writing, within five (5) days of your receipt of this FedEx letter, acknowledging that all commercial activities with regard to the Infringing Product have halted.

We also demand that you provide us with the following written information with regard to the Infringing Product, which should be satisfied by computer printout from your actual business records. For the purpose of the following information, the Infringing Product should be defined as the "3 Piece Bed Set" in both queen and king sizes shown above, ***and any other products offered for sale or sold by your company which include the same or a similar fabric design, and noting that the design may be used in various color ways.*** We demand written information as follows:

Beatrice Home Fashions, Inc.

-3-

February 27, 2012

1. An explanation of how Dandy Damask came to be copied, including but not limited to identification of the parties or entities involved in the design of the Infringing Product, including entity and personal name, address, phone, fax, and email;
2. The total number of Infringing Product which you purchased, produced, or had produced for you;
3. The total number of the Infringing Product in your inventory on the date this letter is received by you;
4. The total number of the Infringing Product ordered by you, but not as yet received;
5. The total invoice price for the Infringing Product which you paid to vendors; and
6. The total invoice price for the Infringing Product which you received from customers.

This letter is written to you to demand your full and immediate cooperation in the hope that such cooperation will keep our client's attorneys' fees to a minimum. Our specific hope is that an agreed resolution can then be reached which will protect our client's valuable rights, yet not require litigation. In that case, our client may be willing to come to a resolution which allows you to sell off your inventory of the Infringing Product. On the other hand, if your cooperation is not immediate and complete, then we will have no choice but to recommend that our client promptly seek relief from the federal courts. If that step is necessary, our client will be unlikely to accept any agreed resolution which does not include full reimbursement of its attorneys' fees incurred, in addition to whatever further monetary and equitable relief is available from the Court. Please note that this paragraph should not be considered an invitation to sell-through inventory. That option will be available only if a formal written resolution of all claims is executed by the parties. Any sales or further distribution of Infringing Products made after your receipt of this letter shall be used as evidence of willful infringement, so prudence should dictate that you cease distribution pending any agreed resolution.

This letter is without prejudice to any of our client's rights, all of which are expressly reserved.

Very truly yours,

AMSTER, ROTHSTEIN & EBENSTEIN LLP

s/ Chester Rothstein /jc

Chester Rothstein

CPR:jc

cc: Michael Miller Fabrics, LLC